

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4837 of 1999

to

FIRST APPEAL No 4844 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHANTABEN SOMABHAI PATEL

Appearance:

MR KG SHETH, Ld. AGP for Appellants
MR YOGESH S LAKHANI for Respondent

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 16/03/2000

ORAL JUDGEMENT {Per: Kadri, J.}

1. Admitted. Mr.Y.S. Lakhani, learned Counsel, waives service of notice on behalf of respondent. At the request of learned counsel appearing for the parties, all these appeals are taken up for final hearing today.

2. All these appeals are filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to be as 'the Act') read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated January 12, 1998, rendered by the learned Assistant Judge, Sabarkantha District at Himmatnagar, in a group of Land Reference Case No.3263 to 3270 of 1989, by which the Reference Court had treated Land Ref.Case No.3268 of 1989 as main reference wherein the parties have led common evidence. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

3. Lands of the claimants-respondents situated at Town Bayad, Dist. Sabarkantha, came to be acquired for the public purpose of Modasa-Kapadvanj-Nadiad railway, by issuance of the notification under Section 4(1) of the Act, which came to be published in the Government Gazette on May 30, 1985. After following the usual procedure under the Act, declaration under Section 6 of the Act was made, and which was published in the Government Gazette on October 16, 1986. The land owners of the acquired lands were served with notices under Section 9(3)(4) of the Act. The land owners appeared before the Land Acquisition Officer and claimed compensation of the acquired lands at the rate of Rs.60.00/- per sq.mt., but, having regard to the materials placed before him, the Land Acquisition Officer made his award on October 15, 1988, and offered compensation to the claimants at the rate of Rs.4.50/- per sq.mt. The respondents-claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court Sabarkantha at Himmatnagar, which came to be numbered as Land Reference Case No.3263/89 to 3270/89.

4. To substantiate their claim of compensation of acquired lands at the rate of Rs.60/- per sq.mt., the

respondents-claimants examined Sudhirbhai Somabhai Patel at Exh. 11. The said witness produced certified copy of the judgment and award of the acquired lands of village Bayad at Exh.40. The claimants also produced extract of revenue record from Exh.25 to 36. The claimants have also examined one witness Rajnikant Mohanbhai, Talati-cum-Mantri at Exh.44. The claimants produced copy of sale index at Exh.49. The Reference Court on the overall appreciation of oral as well as documentary evidence relied on previous award Exh.40 in Land Reference Case No.3385/89 wherein the market value of the acquired lands of village Bayad was determined at the rate of Rs.45/- per sq.mt. as on February 6, 1987. The Reference Court had deducted Rs.5/- as there was gap of nearly 20 months between issuance of notification of the present acquired lands and issuance of the notification of the acquired lands of previous award Exh.40. The Reference Court also extended the statutory benefits under the Act in favour of the respondents which has given rise to file these appeals by the appellants namely State of Gujarat and the Executive Engineer, Construction, Nadiad-Kapadvanj-Modasa Railway Project, Railwaypura, Ahmedabad.

5. We have taken through the entire record and proceedings produced before the court by the learned counsel appearing for the parties.

6. Learned Counsel for the Government Mr.K.G.Sheth has vehemently submitted that, the compensation determined by the reference Court was excessive and is based on no evidence and, therefore, impugned common judgment and award deserves to be quashed and set aside. Counsel for the Government submitted that, the acquired lands of previous award Exh.40, were not at all relevant and comparable for determination of the market value of the present acquired lands and, therefore, the reference court had erred in placing reliance on previous award Exh.40 for determination of market value of the present acquired lands. Counsel for the Government further submitted that, the acquired lands of previous award Exh.40 were having better fertility and situation and, therefore, previous award Exh.40 cannot be made base for determination of market value of the present acquired lands. Counsel for the Government further urged that, determination of the market value by the reference court is excessive and therefore the appeals should be allowed.

7. Counsel for the respondents-claimants has vehemently submitted that, previous award Exh.40 was in all respect relevant and comparable for determination of

market value of the present acquired lands and, therefore, the reference court had committed no error in placing reliance on the previous award Exh.40. Counsel for the respondents further submitted that, the claimants had led sufficient evidence that the lands of previous award Exh.40 were having same fertility if compared to the present acquired lands. Counsel for the respondents submitted that, a just, adequate and reasonable compensation was awarded by the reference court and, therefore, the appeals be dismissed.

8. The claimants witness Sudhirbhai Somabhai Patel at Exh.11 had described the situation and fertility of the acquired lands and had deposed that the acquired lands were having fertility and the respondents used to take three crops in a year. In support of this assertion made by the witness, he had produced the revenue extract of 7/12 at Exh.25 and 36. The revenue extract also indicates that the claimants used to take three crops in a year on the acquired lands. The witness also further described that village Bayad was a developed town, having all the facilities and it was connected by road with all the important cities and towns of the State of Gujarat. The witness deposed that the earlier lands of town Bayad were acquired for court building and for the purpose of establishing jail and, therefore, there was heavy pressure on the lands of town Bayad, as a result, prices of the lands gradually increases every year. The witness during the course of his examination produced certified copy of the judgment and award of Land Reference Case No.3385/89 which related to the acquired lands of town Bayad for the purpose of establishing sub-jail. The notification of the acquired lands of previous award Exh.40 was issued on February 6, 1987, and the reference Court by relying on the previous award of the same town Bayad had determined the market value of the acquired lands of previous award Exh.40 at the rate of Rs.45/- per sq.mt. The reference Court had deducted Rs.5/- as there was gap of 20 months between issuance of the notification of the acquired lands of previous award Exh.40 and the acquired lands of present appeals. In our opinion, deduction of Rs.5/- by the Reference Court to the market value determined under previous award Exh.40 is not proper. In the present appeals, the lands which were acquired pursuant to the notification under Section 4(1) of the Act was of the year 1985 whereas the lands which were acquired and which were the subject matter of previous award Exh.40 in the year 1984, we therefore deduct 15% per cent from the market value as determined by the Reference Court in previous award Exh.40, which was at the rate of Rs.45/- per sq. mt. If the deduction

is made at the rate of 15% per cent, the net market value of the present acquired lands would come to Rs.45/- less Rs.6.75/i.e. Rs.38.25/- per sq.mt. Taking into consideration the facts and circumstances of the case, we determine the market value of the present acquired lands at the rate of Rs.38.25/- which, in our opinion, is just, adequate and reasonable compensation to be awarded to the claimants. The claimants would also be entitled the statutory benefits under Sections 23(1-A), 23(2) and amended Section 28 of the Act.

9. For the foregoing reasons, the appeals are partly allowed with no order as to costs. Rule made absolute to the aforesaid extent. Office is directed to draw the decree in terms of this judgment.

10. Learned counsel for the respondents has submitted that the possession of the acquired lands was taken by the acquiring body as back in the year 1984 while the respondents-claimants have not paid the compensation for the acquired lands. Therefore counsel for the respondents submitted that a direction be issued to the appellants to deposit the awarded compensation within a reasonable time. The request made by learned counsel for the respondents deserves consideration. In view of the facts and circumstances of the case, as stated above, we direct the appellants to deposit the entire amount of compensation alongwith the statutory benefits in the Reference Court within four months from today.

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